

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARIALEA POTTINGER-MOORE,

Plaintiff,

v.

JUDITH TAN, et al.,

Defendants.

Case No. 2:23-cv-01395-GMN-EJY

ORDER

Plaintiff Marialea Pottinger-Moore brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that she claims she suffered while incarcerated at Florence McClure Women's Correctional Center. (ECF No. 1-1.) On June 14, 2024, this Court ordered Pottinger-Moore to update her address by July 19, 2024. (ECF No. 7.) That deadline expired without an updated address from Pottinger-Moore.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of

1 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
2 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
3 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

4 The first two factors, the public's interest in expeditiously resolving this litigation
5 and the Court's interest in managing its docket, weigh in favor of dismissal of Pottinger-
6 Moore's claims. The third factor, risk of prejudice to defendants, also weighs in favor of
7 dismissal because a presumption of injury arises from the occurrence of unreasonable
8 delay in filing a pleading ordered by the court or prosecuting an action. See *Anderson v.*
9 *Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring
10 disposition of cases on their merits—is greatly outweighed by the factors favoring
11 dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can
13 be used to correct the party's failure that brought about the Court's need to consider
14 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
15 that considering less drastic alternatives *before* the party has disobeyed a court order
16 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
17 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
18 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
19 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
20 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
21 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
22 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
23 F.2d 1421, 1424 (9th Cir. 1986).


24 Because this action cannot realistically proceed without the ability for the Court
25 and the defendants to send Pottinger-Moore case-related documents, filings, and orders,
26 the only alternative to dismissal is to enter a second order setting another deadline for
27 Pottinger-Moore to file her updated address. But without her updated address, it is not
28 clear that a second order would even reach Pottinger-Moore. Setting another deadline is

1 not a meaningful alternative given these circumstances. So the fifth factor favors
2 dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they
5 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
6 prejudice based on Pottinger-Moore's failure to file an updated address in compliance
7 with this Court's June 14, 2024, order. The Clerk of Court is directed to enter judgment
8 accordingly and close this case. No other documents may be filed in this now-closed
9 case. If Pottinger-Moore wishes to pursue her claims, she must file a complaint in a new
10 case.

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12 DATED THIS 12 day of August 2024.

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16 Gloria M. Navarro, Judge
17 United States District Court
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